

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 273 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FARIDMIYA HUSENMIYA SHAIKH

Versus

PGJ NAMPUTHIRI

Appearance:

MR MIG MANSURI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/07/98

ORAL JUDGEMENT

The Commissioner of Police, Ahmedabad city, on 3.1.1998 passed an order under sec.3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, detaining the petitioner. The legality and validity of the said order is challenged in this petition under Article 226 of the Constitution of India.

IN the grounds of detention supplied to the

petitioner, the detaining authority has placed reliance on two prohibition cases registered against the petitioner, one out of which is pending for trial and second one is at the investigation stage. Besides the registration of these two cases, there are two incidents of dated 30.11.1997 and 22.12.1997, which are being narrated by the four witnesses whose identity has not been disclosed while exercising the powers under sec. 9(2) of the Act. In those statements, an allegation is made against the petitioner by the witnesses that the witnesses requested the petitioner not to take delivery of foreign liquor near the mosque which is a pious place, however, the petitioner threatened the witnesses at the point of knife and rushed towards people who gathered there with open knife, with the result, people started running helter and skelter and an atmosphere of terror and fear was created. In the second incident, the petitioner entered into a quarrel with the witnesses when his running scooter was touched with the witness and the witness was thereafter abused and at that time, also the petitioner rushed towards the people who gathered and atmosphere of terror and fear was created and the people started running helter and skelter. Considering this material, the detaining authority has recorded a finding that the petitioner is bootlegger within the meaning of sec. 2(b) of the Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

The petition is required to be allowed in view of the decision of the Supreme Court in Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. IN view of this, the order of detention is vitiated.

In the result, the petition is allowed. The impugned order of detention dated 3.1.1998 is set aside. The petitioner is ordered to be released forthwith, if

he is not required for any other lawful reason. Rule made
absolute.
